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FILED

Date 7/28/15 By 

7
8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2016-8

13 **ROBERT K. BRUTON**
14 **1049 Dell Avenue**
15 **Campbell, CA 95008**

ACCUSATION

16 **Field Representative License No. FR 45977,**
17 **Branches 2 and 3**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Susan Saylor (Complainant) brings this Accusation solely in her official capacity as
22 the Registrar/Executive Officer of the Structural Pest Control Board, Department of Consumer
23 Affairs.

24 2. On or about September 20, 2010, the Structural Pest Control Board issued Field
25 Representative License Number FR 45977, Branches 2 and 3, to Robert K. Bruton (Respondent).
26 The Field Representative License was in full force and effect at all times relevant to the charges
27 brought herein and will expire on June 30, 2016, unless renewed.

28 **JURISDICTION**

3. This Accusation is brought before the Structural Pest Control Board (Board),
Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section **8625** of the Code states:

3 The lapsing or suspension of a license or company registration by operation of law or by
4 order or decision of the board or a court of law, or the voluntary surrender of a license or company
5 registration shall not deprive the board of jurisdiction to proceed with any investigation of or
6 action or disciplinary proceeding against such licensee or company, or to render a decision
7 suspending or revoking such license or registration.

8 STATUTORY PROVISIONS

9 5. Section **8620** of the Code states:

10 The board may upon its own motion, and shall upon verified complaint in writing of any
11 person, investigate the actions of any individual acting as a licensee, or making application for a
12 license.

13 After a hearing, the board may temporarily suspend or permanently revoke a license issued
14 under this chapter if the holder, while a licensee or applicant, is guilty of or commits any one or
15 more of the acts or omissions constituting grounds for disciplinary action. In addition to its
16 authority to suspend or revoke a license, the board may assess a civil penalty as follows:

17 (a) Upon the conclusion of a hearing held pursuant to Chapter 5 (commencing with
18 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, if the proposed
19 decision of the hearing officer is that the licensee is guilty of or has committed any one of the acts
20 or omissions constituting grounds for disciplinary action, the proposed decision shall provide for
21 the imposition of a suspension or for the revocation of the license. In this case, the board may
22 impose the suspension or revocation. The board may also, in lieu of a suspension, assess a civil
23 penalty. The licensee may express a preference for a form of discipline, but the board shall not be
24 bound by any expression of preference.

25 If a licensee elects to stipulate to a disciplinary action prior to an administrative hearing, the
26 board may impose a civil penalty, in accordance with this section, in lieu of suspension.

27 If a proposed stipulation is rejected by the board, it is null and void and does not constitute
28 an admission of any violation charged.

1 (b) The civil penalty shall not be more than five thousand dollars (\$5,000) for an actual
2 suspension of one to 19 days.

3 (c) The civil penalty shall not be more than ten thousand dollars (\$10,000) for an actual
4 suspension of 20 to 45 days.

5 (d) If a licensee is assessed the civil penalty in lieu of an actual suspension, the penalty
6 shall be paid before the effective date of the decision.

7 (e) If the civil penalty is not paid before the effective date of the suspension, the license
8 shall be suspended until the penalty is paid or until the actual suspension is served.

9 No civil penalty shall be assessed in lieu of any suspension which exceeds 45 days. With
10 the exception of the proceedings on suspensions undertaken or on fines levied pursuant to Section
11 8617, the proceedings under this article shall be conducted in accordance with Chapter 5
12 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and
13 the board shall have all the powers granted therein.

14 In any order of suspension or revocation, the board may authorize the completion of any
15 contract or work contracted for under terms and conditions set forth in the order.

16 6. Section **8649** of the Code states:

17 Conviction of a crime substantially related to the qualifications, functions, and duties of a
18 structural pest control operator, field representative, applicator, or registered company is a ground
19 for disciplinary action. The certified record of conviction shall be conclusive evidence thereof.

20 7. Section **8654** of the Code states:

21 Any individual who has been denied a license for any of the reasons specified in Section
22 8568, or who has had his or her license revoked, or whose license is under suspension, or who has
23 failed to renew his or her license while it was under suspension, or who has been a member,
24 officer, director, associate, qualifying manager, or responsible managing employee of any
25 partnership, corporation, firm, or association whose application for a company registration has
26 been denied for any of the reasons specified in Section 8568, or whose company registration has
27 been revoked as a result of disciplinary action, or whose company registration is under
28 suspension, and while acting as such member, officer, director, associate, qualifying manager, or

1 responsible managing employee had knowledge of or participated in any of the prohibited acts for
2 which the license or registration was denied, suspended or revoked, shall be prohibited from
3 serving as an officer, director, associate, partner, qualifying manager, or responsible managing
4 employee of a registered company, and the employment, election or association of such person by
5 a registered company is a ground for disciplinary action.

6 8. Section 8655 of the Code states:

7 A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
8 charge substantially related to the qualifications, functions, and duties of a structural pest control
9 operator, field representative, applicator, or registered company is deemed to be a conviction
10 within the meaning of this article or Section 8568 of this chapter. The board may order the license
11 or registration suspended or revoked, or may decline to issue a license, when the time for appeal
12 has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting
13 probation is made suspending the imposition of sentence, irrespective of a subsequent order under
14 the provisions of Section 1203.4 of the Penal Code allowing the individual or registered company
15 to withdraw a plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,
16 or dismissing the accusation, information or indictment.

17 9. California Code of Regulations, title 16, section 1937.1, states:

18 For the purposes of denial, suspension or revocation of a license or company registration
19 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
20 considered to be substantially related to the qualifications, functions or duties of a licensee or
21 registered company under Chapter 14 of Division 3 of the code if to a substantial degree it
22 evidences present or potential unfitness of such licensee or registered company to perform the
23 functions authorized by the license or company registration in a manner consistent with the public
24 health, safety, or welfare. Such crimes or acts shall include, but not be limited to, the following:

25 (a) Any violation of the provisions of Chapter 14 of Division 3 of the code.

26 (b) Commission of any of the following in connection with the practice of structural pest
27 control:

28 (1) Fiscal dishonesty

1 (2) Fraud

2 (3) Theft

3 (4) Violations relating to the misuse of pesticides.

4 10. California Code of Regulations, title 16, section **1937.2**, states, in pertinent part:

5 ...

6 (b) When considering the suspension or revocation of a structural pest control license or
7 company registration on the grounds that the licensee or registered company has been convicted
8 of a crime, the board, in evaluating the rehabilitation of such person or company and his or her or
9 its present eligibility for a license or company registration will consider the following:

10 (1) Nature and severity of the act(s) or offense(s).

11 (2) Total criminal record.

12 (3) The time that has elapsed since commission of the act(s) or offense(s).

13 (4) Whether the licensee or registered company has complied with any terms of parole,
14 probation, restitution or any other sanctions lawfully imposed against the licensee or registered
15 company.

16 (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
17 Penal Code.

18 (6) Evidence, if any of rehabilitation submitted by the licensee or registered company.

19 ...

20 **COSTS**

21 11. Section **125.3** of the Code states, in pertinent part, that a Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 **CAUSE FOR DISCIPLINE**

26 (Criminal Conviction)

12. Respondent is subject to disciplinary action under Code section 8649 in that he has been convicted of a crime substantially related to the qualifications, functions, and duties of a field representative. The circumstances are as follows:

13. On or about February 3, 2015, in Santa Clara Superior Court case number C1481389, Respondent was convicted of having violated California Penal Code section 311.11(a) (possession of child pornography), a felony.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Field Representative License Number FR 45977, Branches 2 and 3, issued to Robert K. Bruton;

2. Imposing suspension and/or fines upon Field Representative License Number FR 45977, Branches 2 and 3, issued to Robert K. Bruton;

3. Prohibiting Robert K. Bruton from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee of any registered company during the period that discipline is imposed on Field Representative License Number FR 45977, Branches 2 and 3, issued to Robert K. Bruton;

4. Ordering Robert K. Bruton to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

5. Taking such other and further action as deemed necessary and proper.

DATED: 7/28/15


SUSAN SAYLOR

Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant